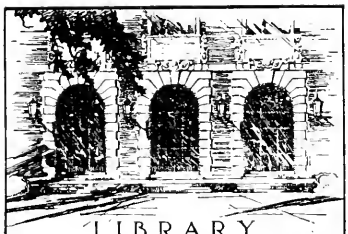

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INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS

RECENT TRENDS IN OCCUPATIONAL DISEASE LEGISLATION

UNIVERSITY OF ILLINOIS
BULLETIN

Editorial Note

The Institute of Labor and Industrial Relations was established in 1946 to "inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure the facts which will lay the foundation for future progress in the whole field of labor relations."

The Institute seeks to serve all the people of Illinois by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

The *Bulletin* series is designed to implement these aims by periodically presenting information and ideas on subjects of interest to persons active in the field of labor and industrial relations. While no effort is made to treat the topics exhaustively, an attempt is made to answer the main questions raised about the subjects under discussion. The presentation is non-technical for general and popular use.

Additional copies of this *Bulletin* and others listed on the last page are available for distribution.

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Recent Trends in Occupational Disease Legislation

By Louise K. Steiner

A worker with an occupational disease has a much better chance of receiving compensation today than he ever did before.

Amendments to state workmen's compensation laws and occupational disease acts have enlarged the scope of these laws to include more diseases, persons in more varied types of occupations, and larger monetary benefits.

This has been the trend since World War II. Since then, our state legislatures have moved to liberalize our state laws requiring employers to compensate workers for occupational diseases. This trend grew steadily through the forties and has become marked in the last few years.

Public concern about occupational diseases is not new. It goes back to the first decades of this century when the causes and symptoms of such diseases began to be recognized and corrected. Diseases of industrial origin were first brought to public attention by social reform groups and later by government agencies. Early attempts to meet the problem through legislation were not continued, however, and many years passed before occupational diseases again received attention from our law makers.

Interest in this subject has been renewed in the last 15 years, and much has been accomplished in that time. In 1936, only 20 states had laws with occupational disease provisions — and nine of these provided for only a few special diseases. By the end of 1950, 41 states had enacted laws with occupational disease provisions. Of these, 24 give full coverage and the other 17 have widened their coverage considerably.

Although developments in preventative legislation are of great importance and are receiving increasing interest, this bulletin will concern itself only with the subject of compensation of occupational disease.

SCOPE OF THE PROBLEM

Statistics are not a good indication of the proportion of occupational disease cases in this country. However, even with only limited coverage of disease, 60,000 cases of occupational disease were reported as compensable in 1948.

And the majority of the diseases were never reported.

Statistics on occupational diseases are difficult to secure. No state is able to furnish complete reports on the number of actual cases within its borders.

Two major areas make it difficult to keep exact statistics on occupational disease. One is toxic exposure. A worker's health may be injured beyond repair while the disease itself remains dormant and unrecognized for a long period of time.

The other is the development of new industries with corresponding new diseases. As long as new industries continue to arise, new health impairments may result. Even as we learn to control older industrial hazards through preventive techniques, new diseases will demand recognition and compensation.

These are general areas which cloud the whole issue of occupational diseases. Six more specific reasons, however, appear to make the statistics less exact. They are:

1. The fact that many industries are not covered by existing laws.
2. The failure of some inexperienced doctors to recognize the diseases.
3. The reluctance of some informed industrial physicians to involve their employers in law suits by reporting cases as occupational in origin.
4. The disposition of some employers to settle workmen's claims privately in order to protect the reputations of their companies.
5. The lack of awareness by both employer and employee of their rights and obligations under the law.
6. The failure of many state laws to require adequate reports from industrial hygiene agencies.

It is interesting to note that compensation data from such states as Wisconsin, Massachusetts, Ohio, and New York — where occupational diseases have been compensable for many years — do not show occupational health disabilities for industry to be more than 3% of total occupational disabilities.

However, even 3% of the 1948 national occupational injury total amounts to 60,000 cases of disablement of one day or more each.

In Illinois in 1949, occupational disease cases were 1.2% of all reported industrial injuries.[1] And, during the 15-year history of the Illinois Act, diseases of occupational origin have not exceeded 2% of the total injuries. (See Table 1.)

The Bureau of Labor Standards points out the seriousness of the problem in terms of human misery, loss in productive time, and money.[2]

NATURE OF OCCUPATIONAL DISEASES

The definition of occupational disease has been difficult both legally and medically. Most authorities divide industrial diseases into four classes:

Table 1. Comparison of Reported Occupational Disease Injuries to Total Industrial Injuries Reported in Illinois, 1935-1949*

Year	Number or Cases of Total Injuries	Number of Cases of Occupational Disease Injuries	Percentage of Occupational Disease Cases to Total Injury Cases
1935	34,481	371	1.1%
1936	38,647	309	0.8%
1937	42,424	539	1.3%
1938	32,848	393	1.2%
1939	34,423	470	1.4%
1940	39,147	573	1.5%
1941	47,570	574	1.2%
1942	49,877	608	1.2%
1943	54,733	867	1.6%
1944	58,496	1144	2.0%
1945	54,638	1036	1.8%
1946	52,525	747	1.4%
1947	52,979	836	1.6%
1948	51,048	618	1.2%
1949	48,405	603	1.2%

* Adopted from *Annual Report on Industrial Accidents in Illinois in 1948*, Part I, p. 20. 1949 figures from *Annual Report on Industrial Accidents in Illinois in 1949*, Part I.

1. Diseases resulting from accidental injuries received during employment. Blood poisoning resulting from a wound sustained on the job would be placed in this category.
2. Diseases which are generally acknowledged to be occupational in nature. These are known to occur frequently in certain employments and to follow the use of certain materials. Dermatitis (skin disease) contracted from work with cutting oils would be classed in this way.
3. Diseases which occur neither as the result of an accident nor from a definite occupation. Such diseases result from exposure and could happen in a number of different occupations. Pneumonia or the common cold would be classified in this way.
4. Diseases which develop slowly and are caused or increased by physical and emotional strain. Gradual wear and tear to the body may develop while an employee is performing an ordinary duty. Heart attacks are good illustrations of these cases.

Legislation relating to these classes of disease varies among states. The last two classes usually must be interpreted by the courts and are seldom spelled out specifically in legislation.

State Law Definitions

Various state laws have defined occupational disease in different ways. The problem of making occupational disease part of the cost of production — without transferring to the employer and the consumer the costs of a disease contracted by the workmen quite apart from his employment — is not an easy one to solve. Connecticut law states that "occupational disease shall mean disease peculiar to the occupation in which an employee was engaged and due to abuse in excess of the ordinary hazards of employment as such." The law of Indiana declares that "occupational disease means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of employment shall not be compensable." Illinois legislation adds to this definition that "disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence."

A reasonably clear broad definition of occupational disease was originated by the Supreme Court of Ohio when it declared: "A disease contracted in the usual and ordinary course of events which from the common experience of humanity is known to be incident to a particular employment is an occupational disease."

Generally, then, to satisfy most states' requirements certain conditions must be met:

1. The disease must have its inception in the employment.
2. The hazard must distinguish the occupation from the usual run of industry.
3. The hazard must have identifying characteristics.
4. A causal or generally recognized relationship must exist between the hazard and the disease.
5. The disease must be determined by an official administrative agency.

Health Hazards

It is impossible in the space of this bulletin even to summarize the medical aspects of the diseases or to enumerate the variety of diseases which would fall under the above definition.

In general, it is possible to say only that occupational diseases are caused by three types of health hazards: chemical, biological, and environmental. Chemical hazards directly attack the worker's body in the

Table 2. Occupational Disease Injuries in Illinois in 1949, by Cause of Injury*

Cause	Number of Cases	Percent of Total
Total	603	100.0%
Skin irritants[1]	345	57.2%
Compressed air	79	13.1
Dusts[2]	52	8.6
Repeated motion, pressure, shock, etc.	51	8.5
Industrial poisons[3]	50	8.3
Infections[4]	14	2.3
Other diseases	12	2.0

[1] Skin irritants consisted largely of cutting oils and cleaning compounds.
[2] This includes 44 cases of silicosis.
[3] Industrial poisons included 21 cases resulting from lead and its compounds.
[4] Includes 9 cases of undulant fever among packing house workers.
* Adapted from *Annual Report of Industrial Accidents in Illinois in 1949*, Part I, p. 43.

form of poisons, dusts, and corrosives. Biological hazards may take the form of infections caused by viruses or germs such as anthrax, tuberculosis, and many others. Fungi and parasites also fall in this class. The third group, environmental conditions of exposure, can be brought on by excessive noise, radioactive materials, vibration, or extreme temperatures.

These factors are occasionally interacting. Dust attacking miners' lungs and predisposing them to a particular type of tuberculosis, called silicosis, is an example of such a combination of factors. Poisoning which results in occupational cancer is another illustration.

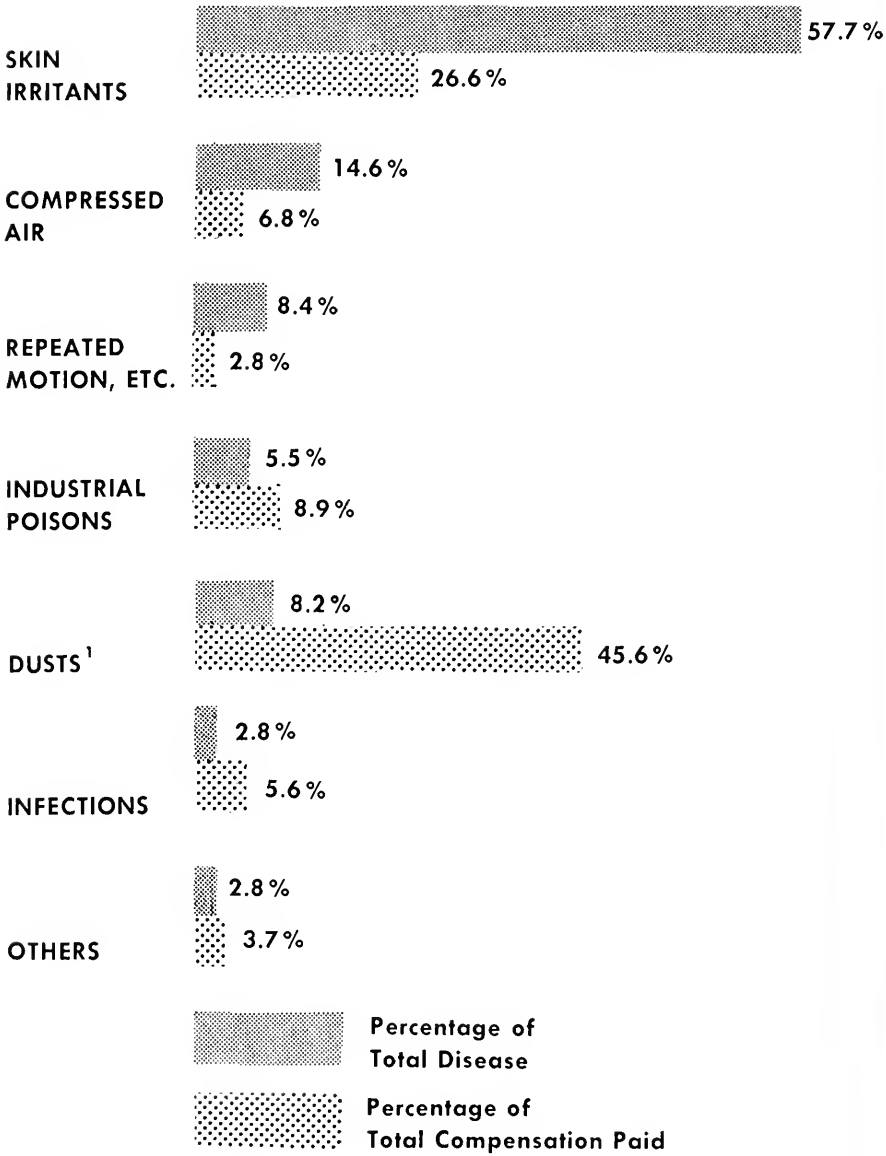
Frequency and Compensation

A great deal can be done in these areas through simple preventive techniques. Although at one time lead poisoning was reported more frequently than any other occupational disease, it has been controlled in recent years. Skin irritants now account for the largest proportion of industrial disease. Over 50% of all reported diseases in all states are caused by skin irritants. The Annual Report of Industrial Accidents in Illinois in 1949 shows that skin irritants are responsible for 57.2% of all reported occupational diseases and that compressed air is responsible for 13.1%. (See Table 2.) More cases of occupational disease arise in manufacturing in Illinois than in any other industrial group. (See Table 3.)

These statistics cover up many of the most important aspects. Skin irritants, for instance, are in general of a less serious nature than diseases

CHART I

CAUSES OF AND PAYMENTS FOR CLOSED CASES OF OCCUPATIONAL DISEASES IN ILLINOIS IN 1949*



[1] Includes all cases of silicosis and tuberculosis.

* Source: *Annual Report on Industrial Accidents in Illinois in 1949*, Part II, p. A-20.

Table 3. Occupational Disease Injuries Reported in Illinois in 1948 by Industrial Group*

Industry Group	Number of Cases	Percent of Total
Total all industries	618	100.0%
Manufacture	353	57.1%
Construction	156	25.2
Wholesale and Retail Trade	47	7.6
Service Industries	29	4.7
Transportation and Public Utilities	20	3.2
Mining and Quarrying	5	0.8
Finance, Insurance, and Real Estate	4	0.7
Agriculture, Forestry, and Fishing	4	0.7

* Adapted from *Annual Report of Industrial Accidents in Illinois in 1948*, Part I, p. 41. 1949 figures according to industrial groups not available.

such as silicosis or poisons taken into the body through inhalation or ingestion. They usually result in temporary rather than permanent injuries or fatalities, and the percentage of total compensation allotted them is comparatively lower than the latter categories.

When compensation payments in Illinois are analyzed, it is found that although dusts account for but 8.2% of the total number of occupational disease cases closed in 1949, these cases receive 45.6% of the compensation payments. Industrial poisons result in 5.5% of the total number of cases closed, but the victims receive 18.5% of the total compensation benefits; while persons suffering from skin irritants, the largest disease group, take but 26.6% of the total compensation. (See Chart I.)

DEVELOPMENT OF OCCUPATIONAL DISEASE LEGISLATION

Workmen's compensation, the first type of social insurance to be developed through legislation in the United States, rests upon the theory that the consumer of economic goods should bear the complete cost incurred in the production of these goods. Compensation for industrial disease is based on the same principle. This idea, sometimes called the doctrine of occupational risk, holds that a worker should not be forced to bear that part of the cost of the finished product which is represented by his wage loss and by additional medical expenses stemming from occupational disease. However, the identification of slowly developing diseases with causal conditions is more difficult than the perception of the immediate relationship between injury and its cause. It is more

difficult for a worker or his doctor to realize that skin cancer had its origin on the job than to perceive that an open wound was caused by a machine without safety guards. Consequently, industry's responsibility for occupational disease has not always been recognized. Even today it is sometimes not fully appreciated.

Common Law History

The tardiness of occupational disease legislation has sometimes been explained in terms of the absence of a history of cases under the common law as well as by the difficulty of defining causes and symptoms. Workmen's compensation, in contrast, has a quite different history. By the end of the nineteenth century, it was well established by court decisions in both England and America that the employer was responsible for the injury or death of an employee resulting from a negligent act by the employer. This precedent was used in experimentation with employer's liability laws and then in the formulation of workmen's compensation laws. No such precedent existed for occupational disease legislation since medical science had not yet reached the point where it could easily diagnose such illnesses, and the causal connection between working condition and industrial disease was hidden.

The mechanization of the factory system brought about increased industrial accidents at the same time that it widened the distance between employer and employee by increasing the size of the establishment. An injured employee, forced to resort to the justice of the common law, found it a long expensive process he was frequently unable to afford. Successful defenses had been developed for the employer against personal injury suits. These took three forms: Contributory Negligence, Assumption of Risk, and the Negligent Acts of Fellow Servants. The defense of contributory negligence provided that even if an employer was guilty of negligence, he was not liable if the injury was due wholly or in part to the employee's own negligence. The doctrine of assumption of risk stated that when a worker accepted a job, he assumed the ordinary risks of that job. The fellow servant rule exempted the employer from responsibility if the employee was injured through the negligence of another worker. In the great majority of cases, at least one of these defenses was applicable. Most workers did not appeal to the courts, since the outcome was so uncertain and law suits were expensive and time-consuming.

In the first decade of this century efforts were made to eliminate or change these defenses used under the common law by the enactment of employers' liability laws. These laws, passed by state and Federal governments, abolished the use of one or more of the common law defenses. However, although the possibility of winning a case was greatly increased

for the workman, he still was unable to secure compensation at many necessary times. His inability to afford fees for lawyers or to wait the time required for the settling of a claim made the new laws still unsatisfactory.

First Workmen's Compensation Law

In 1910, public agitation over this situation brought about the enactment of the first workmen's compensation law of general application. Today, in all states in which workmen's compensation and occupational disease acts allow the employer to decide for himself whether he wishes to be covered, those employers who do not elect to come within the law are refused the use of the three common law defenses. Only when an employee elects to remain outside the law can an employer have recourse to these traditional defenses. These stages in the development of our present day legislation are still significant to us today. It was not until 1948 that the forty-eighth state, Mississippi, passed a workmen's compensation law. In states without occupational disease coverage or in states with employment exemptions, some of these laws still exist in various transitional forms.

Disease Provisions

None of the early workmen's compensation laws contained specific provision for industrial diseases. Although one state (Illinois) passed an occupational disease law in 1911, there were only 20 states with provisions for disease by 1936, and 28 by 1944. Some early court decisions, however, held that existing workmen's compensation laws included compensation for occupational disease. The Massachusetts Court, for instance, early stated that the provision for a "personal injury arising out of and in the course of employment" was broad enough to cover occupational diseases.[3] Although a few states followed this dicision, most did not and workers were forced to resort to the inadequacies of the common law for relief. Since 1944, there has been a marked development in occupational disease legislation. By the end of 1950 only seven states did not have such legislation. (See Chart II.)

History of Illinois Act

The passage of occupational disease legislation has a long and interesting history in Illinois. The first Occupational Disease Act in Illinois was passed in 1911. This act, which was amended in 1923, was declared unconstitutional in 1935. A new act granting full coverage was drafted in 1936 by a joint committee representing the state administration, organized labor, and organized employers. This bill, approved by

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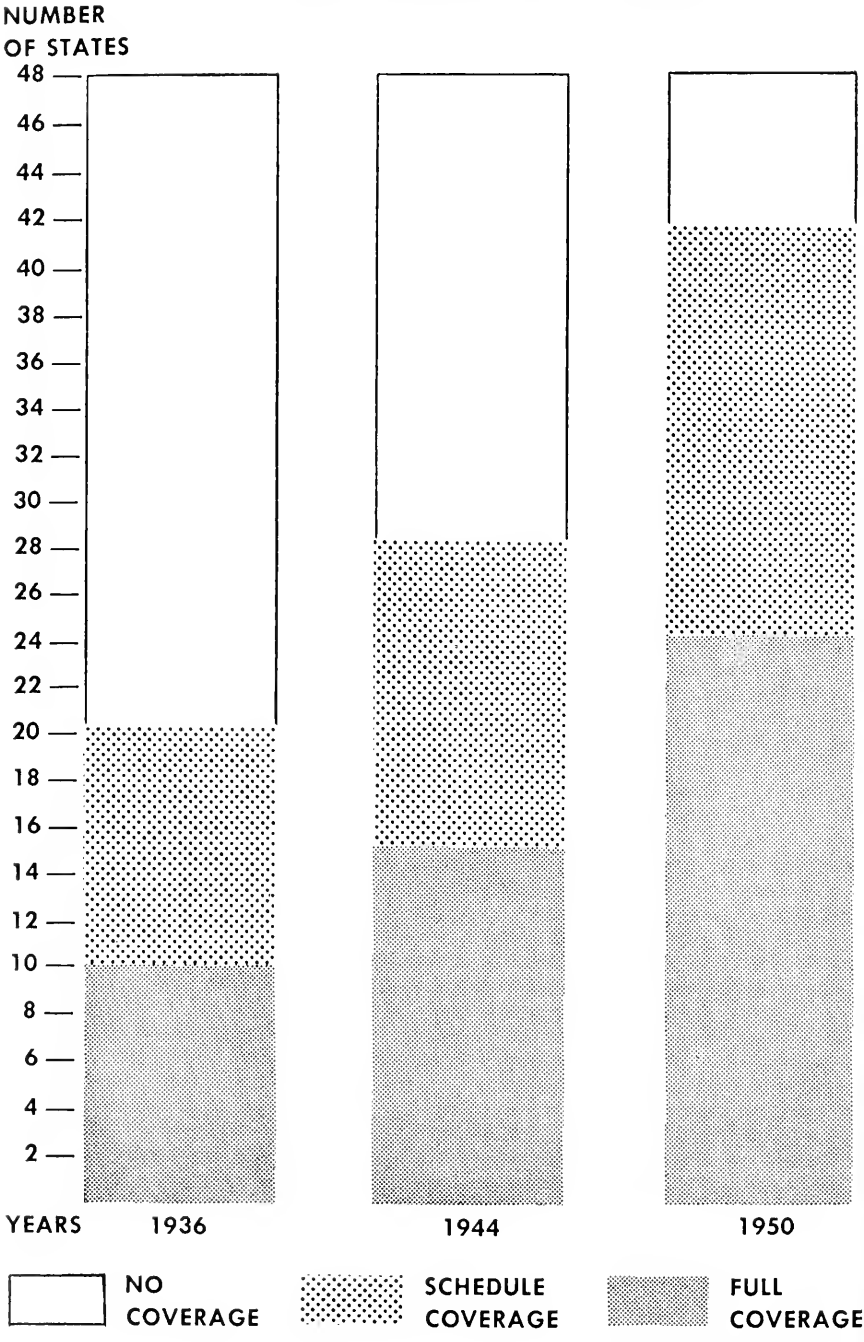
CHART II

INCREASE IN COVERAGE FOR OCCUPATIONAL DISEASE*



* Does not include territories.

all parties prior to its introduction into the 59th General Assembly, met with no opposition.[4]

There is no longer any public question about the importance of making special provision in legislation for occupational diseases. Both management and labor agree that compensation for disease should be provided. The problem is that of making the laws effective in meeting the needs of the people. Controversy exists over the best provisions for achieving this goal.

Although this bulletin is concerned only with state legislation, it should be noted that Federal laws afford some protection to certain groups of workers. Railroad workers, Federal employees, and longshoremen and harbor workers are fully covered for occupational disease by Federal laws.

RECENT TRENDS IN OCCUPATIONAL DISEASE LEGISLATION

In the last few years, most state legislatures have moved to liberalize their provisions for occupational diseases. In most states, this was done by amending workmen's compensation laws; in those states having separate occupational disease acts — Arizona, Colorado, Illinois, Indiana, Iowa, Pennsylvania, Utah, and South Dakota — it was done by changing these laws.

The U. S. Bureau of Labor Standards has pointed out that years of experience with workmen's compensation laws have shown that provisions of some state laws work better than corresponding provisions found in other state laws and that "advances made in some areas show the practicality of improvements elsewhere."[5] No workmen's compensation law is perfect nor are the needs of any two states identical.

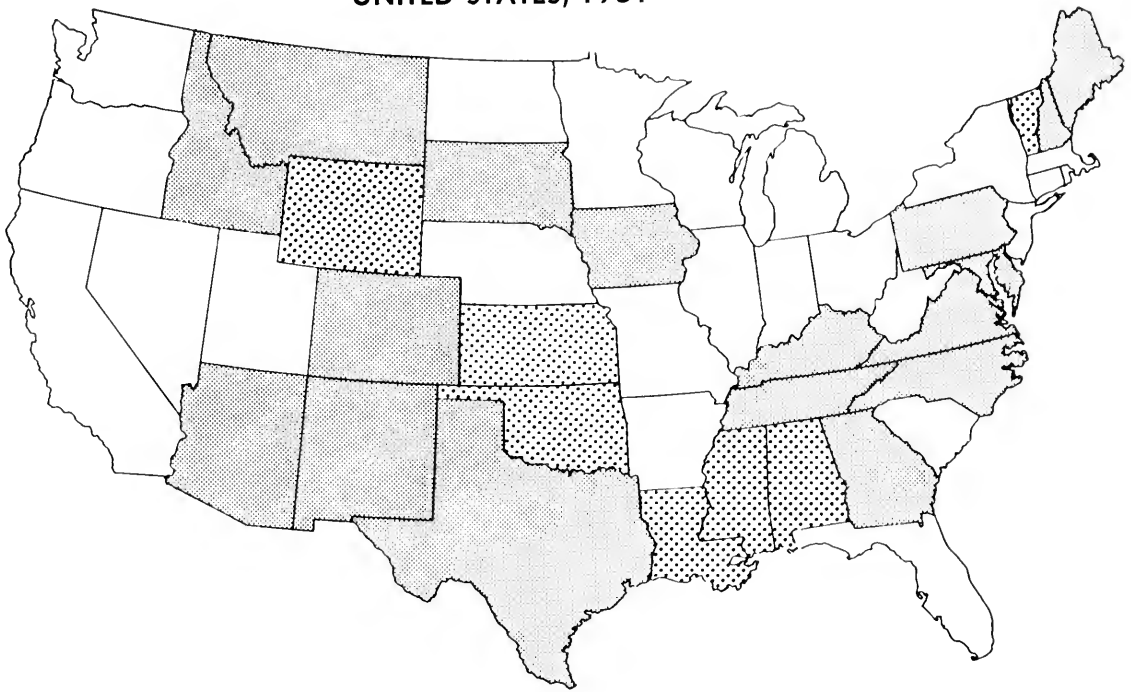
Although this bulletin is concerned with the problem of occupational disease provisions, it is still necessary to consider those aspects of workmen's compensation laws which apply to industrial diseases. Six general areas seem important: (1) coverage of diseases, (2) coverage of persons and employments, (3) benefit payments, (4) medical care, (5) adequacy of administration, and (6) security for payment.

Coverage of Diseases

The most important and easily recognized trend has been toward full coverage of occupational diseases. In 1944, the U. S. Bureau of Labor Standards pointed out that the greatest gap in the coverage of injuries is the failure of some 20 states to provide any type of compensation for occupational diseases. This failure has been rectified to a large extent in

CHART III

OCCUPATIONAL DISEASE COVERAGE
UNITED STATES, 1951



STATES WITH SCHEDULE COVERAGE

STATES WITH NO COVERAGE

STATES WITH FULL COVERAGE

the last six years. Today, 41 states provide some coverage for occupational diseases. (See Chart III.)

Types of coverage include full coverage and varying kinds of list or schedule coverage. Schedule coverage lists a specific number of diseases or groups of diseases which are compensable. Full coverage has the obvious advantage of providing immediately for diseases which may arise from new industrial developments. Arguments against such a complete extension of coverage have been advanced. Many diseases are difficult to classify, and occupational and employer groups fear that they will be forced to pay the cost of diseases which do not have their origin in the job.

Special provisions for silicosis have been considered necessary in many states because silicosis is caused by accumulated exposure to dust over a period of several years. This fact makes it unfair to hold one employer wholly liable for the compensation of a relatively new employee. It also makes it difficult for an employee with an arrested case of silicosis to secure work. Many states, consequently, specify a minimum period of exposure before an employer is liable to pay total compensation. A National Silicosis Conference held in Washington, D. C., at the invitation of the Secretary of Labor in 1937 agreed that a two year period is "a reasonable minimum period of exposure before silicosis may become disabling." The conference recommended the establishment of special state funds for the purpose of compensating workers stricken with silicosis who did not meet the requirement.[6]

Even with full coverage, borderline illnesses such as heart disease and arthritis usually are decided in the courts. Compensation for heart disease is granted under Workmen's Compensation Laws rather than Occupational Disease Acts. The heart ailments usually must be traced directly to some accidental or unusual circumstances inherent in the occupation. Legal interpretation of the particular law frequently is necessary.

Delaware, Nevada, New Jersey, Rhode Island, Utah, and West Virginia changed from schedule to full coverage during 1949. West Virginia's amendment represented a greater advance than the others as that state had previously provided only for silicosis. South Carolina enacted its first law governing occupational diseases in 1949, becoming the twenty-third state with full coverage. In 1950, Massachusetts repealed the separate provisions for silicosis and other occupational dust diseases making the same provisions apply for these as for other diseases.

Seventeen other states provide schedule coverage for diseases or groups of diseases. (See Table 4.) Seven states — Alabama, Kansas, Louisiana, Mississippi, Vermont, Wyoming, and Oklahoma — still have no special provisions for occupational diseases. These states, however, do compensate either directly or indirectly for diseases resulting from

Table 4. Coverage of Occupational Diseases, As of October 1, 1950

Full Coverage	Schedule Coverage	
	Jurisdiction	Number of Diseases[1]
Alaska	Arizona	36
Arkansas		
California	Colorado	22
Connecticut	Georgia	23
*Delaware	Idaho	11
District of Columbia	Iowa	16
Florida	Kentucky	([2])
Hawaii	Maine	13
Illinois	Maryland	39
Indiana	Montana	([3])
Massachusetts	New Hampshire	([4])
Michigan	New Mexico	31
Minnesota	North Carolina	25
Missouri	Pennsylvania	12
Nebraska	Puerto Rico	16
*Nevada	South Dakota	24
*New Jersey	Tennessee	9[5]
New York	Texas	45
North Dakota	Virginia	46[5]
Ohio		
Oregon		
*Rhode Island		
**South Carolina		
*Utah		
Washington		
*West Virginia		
Wisconsin		

[1] In some states the number of diseases refers to "groups of diseases."

[2] Covers only injury or death by gas or smoke in mines and poisonous gas in any occupation. Voluntary as to silicosis.

[3] Separate act provides payment of $50 a month from public funds.

[4] Covers silicosis and other pulmonary diseases, anthrax lead poisoning, dermatitis venenata, and diseases due to the inhalation of poisonous gases or fumes.

[5] Full coverage permissible.

* Changed from schedule to full coverage in 1949.

** New law adopted 1949.

Source: Bureau of Labor Standards, *Bulletin No. 125*, p. 10.

accidents. Montana recently passed an act providing a $50 per month payment out of public funds to persons totally disabled from silicosis if they have had 10 years of state residence.

Another method of limiting coverage is through the use of a long waiting period. Such a period limits the diseases covered since it does not take care of diseases of short duration. Some waiting period is considered desirable since the cost of administrative burden of bookkeeping in setting

up claim files for short illnesses is considered too great.[7] Such waiting periods apply only to compensation payments since medical services are provided immediately. National conferences on labor legislation sponsored by the Bureau of Labor Standards have recommended that the waiting period should not be more than seven days or less than three, with retroactive payments to the date of disability if the disability continues 14 days.[8]

All states having occupational disease legislation with the exception of Colorado fall within the recommended seven-day period. Colorado has a 30-day waiting period in the case of occupational disease, but retroactive payments are made if the disability lasts 60 days. Retroactive payments are made if the disease lasts 14 days in Arizona, Connecticut, Rhode Island, and South Carolina. The period is shorter in Massachusetts (8 days), Nevada (5 days), New Hampshire (7 days), and in Wisconsin (10 days). Oregon has no waiting period provisions.

During 1949-50 waiting period provisions were amended in three states having occupational disease provisions and in Hawaii. In Hawaii the period was reduced from seven to five days with compensation to be paid from the date of disability if the disease continues more than 21 days. In Maine, the law was amended to pay compensation from the date of disability when the disease extends over 28 days. California provided for the payment of benefits for the duration of the waiting period if the disease lasts over 49 days, and Indiana cut the period to 28 days.

Coverage of Persons and Employments

In 1948, it was estimated by the Bureau of Labor Standards that only 50% of the workers in the United States were covered by existing laws for injury.[9] Dorothy McCamman disputes this figure in the social security bulletin of July, 1950, with the estimate that three out of four civilian wage and salary workers are protected against employment injuries.[10] In any case, the number eligible for compensation for occupational disease is a much smaller percentage than either figure.

Various provisions prevent our laws from being all inclusive. Some of these are made necessary by existing problems within a state, while others are obsolete. The question whether a law is elective or compulsory is no longer as important as previously, but it is still vital in some states. When a law is elective for either employers or employees, coverage is naturally limited. In general, those laws that are elective for employees do not limit coverage appreciably. The employee usually is expected to declare specifically his desire to be excluded from the law and to retain his right to sue the employer in court. Few employees elect to do this. About two-thirds of the states with elective laws permit an employer to

Table 5. States Making Numerical Exemptions in Workmen's Compensation Laws October 1, 1950

Employers exempt with fewer than	States[1]
3 employees	Connecticut, Nevada, Alaska, Utah, Delaware, Florida, Kentucky, Ohio, Puerto Rico, Texas, Wisconsin, Arizona
4	Colorado, Massachusetts, New Mexico, New York, Rhode Island, Michigan
5	Arkansas, New Hampshire, North Carolina, Tennessee
6	Maine
7	Virginia
9	Georgia
10	Missouri
15	South Carolina

[1] In some states, other deviations in regard to industries and occupations exist. Numerical exemptions apply only to those laws with compulsory coverage or abrogated defenses. Laws are usually elective for employers employing under the stipulated number. This table does not include the seven states without occupational disease provisions.

choose to remain outside the act. They state, however, that if an employer takes advantage of this privilege he loses the three common law defenses and the employee may collect higher compensation.

Exclusions of specific industries, small employers, and coverage of only specified industries are more serious considerations. Agricultural workers, domestic servants, and casual workers are specifically excluded in most states. Employers with fewer than a designated number of employees are automatically exempted from most acts. The number varies from one to 15 employees.

The early doubts concerning the constitutionality of workmen's compensation statutes resulted in many laws being restricted to "hazardous" or "extra hazardous" employments. Commons and Andrews point out that this exclusion is indefensible as "it is that industry in which a person is injured that is hazardous."[11] The Bureau of Labor Standards in its latest Bulletin on Workmen's Compensation (No. 125) claims that the retention of these terms in some states is a major obstacle to the wide coverage of workers.[12]

Nine states increased their coverage of persons and employments in 1949 and 1950. Four of these changed their provisions exempting employers of fewer than a stipulated number of workers. Connecticut provided coverage for employers of three or more persons instead of five or more: Michigan four or more instead of five or more; Nevada three or more instead of four or more; and Utah one or more instead of three

or more in covered employments. These amendments represent a trend toward wider application of workmen's compensation for industrial disease. (See Table 5.)

Additional types of employment were brought under the act in five of the nine states. Many public employees became eligible for compensation. Arizona now covers all persons in the public employ; California covered those persons ordered into fire control service; Maryland included police and firemen of the City of Cumberland; Texas authorized counties to provide benefits to their employees; and Hawaii removed the exemption placed upon workers earning more than $100 a week and public officials earning more than $4,800 annually. New York added volunteer firemen to its coverage. (See Table 6.)

The prohibition of waivers also is favored by the Bureau of Labor Standards. This practice, which allows a handicapped employee to waive by special contract his right to compensation in case of injury, was designed to aid the handicapped to secure work. Most states have now established "second-injury" funds which encourage this same end without narrowing compensation coverage. The "second-injury" fund is a general fund which pays compensation to a handicapped employee for injuries in excess of those payable by the worker's last employer.[13] In other words an employer hiring a handicapped person is not made financially responsible for his previous disability but only for such injury or disease as the worker may incur in his employ.

An amendment to the Indiana Occupational Disease Act increased the number of states with second-injury funds to 41 in 1950. The seven states still without such legislation are Florida, Georgia, Louisiana, Montana, Nevada, New Mexico, and Virginia. The adoption of second-injury funds has been a definite movement of this decade. At the close of 1942, only 11 states had such funds and by the close of 1945, 33 states had them.

California made an important forward step by extending coverage in its second-injury fund to include any person who has a permanent partial disability.

Benefit Payments

Benefit payments are another basic part of compensation legislation. Separate provisions are made for partial and complete disabilities and for permanent and temporary ones. Funeral expenses are paid, and benefits are paid for widows and children. (Medical payments will be discussed separately in the next section.) The serious problem in this area is the gap that frequently exists between compensation payments and a changing cost of living. This problem manifests itself particularly

Table 6. States Making Employment Exemptions in Workmen's Compensation Laws as Applied to Industrial Diseases October 1, 1950

States[1]	Employment Exemptions[2]
Alaska	Agriculture, dairies, domestic servants
Arizona	Farm labor "not employed in the use of machinery," domestic servants, casual employees
Arkansas	Farm labor, domestic servants, casual workers, public charities, vendors or distributors of newspapers
California	Farm labor, domestic servants (unless employed over 52 hours a week), newspaper vendors, charity workers, casual employees, deputy clerks and sheriffs serving without remuneration, watchmen paid by subscription
Colorado	Farm and ranch labor, domestic servants
Connecticut	Casual employees and out workers
Delaware	Farm labor, out labor, domestic servants, casual employees, executive officers of corporations
D. C.	Domestic servants
Florida	Domestic servants, casual employees, farm labor, professional athletes, independent contractors, turpentine labor, labor processing gum products, referees, umpires, etc.
Georgia	Farm labor, domestic servants, charitable employees
Hawaii	None
Idaho	Farm labor, domestic servants, casual employees, employees of charitable organizations, judges, clerks of elections, jurors
Illinois	Farm labor, totally blind persons, persons not in the course of the employer's business, members of fire department in cities over 500,000
Indiana	Farm labor, domestic servants, casual workers
Iowa	Farm labor, domestic service, clerical employees, casual workers, these not in the course of the employer's business
Kentucky	Domestic servants, farm labor

[1] The list of states does not include those states not having occupational disease provisions.

[2] Most states exclude employees covered by existing Federal laws such as railroad and maritime workers. These exclusions are not listed above.

Table 6 — Continued

States[1]	Employment Exemptions[2]
Maine	Farm labor, domestic servants, logging operators
Maryland	Farm labor, domestic servants, county blacksmiths, wheelwrights, cutters of cord or firewood and similar rural employment, employees not engaged in extra hazardous employments
Massachusetts	Persons not in the usual course of the employer's business, domestic service, farm labor, family in household of employer, persons in religious, charitable, and educational institutions others than laborers, workmen, and mechanics
Michigan	Farm labor, domestic servants
Minnesota	Farm labor, domestic servants, casual employees
Missouri	Farm labor, domestic servants, casual employments, public employments
Nebraska	Farm labor, domestic servants, casual employees, public officials
Nevada	— do —
New Hampshire	— do —
New Jersey	Casual workers, vendors of newspapers, elective employees
New Mexico	Farm or ranch labor, domestic servants, casual employees
New York	Farm labor, domestic servants (working less than 48 hours a week in municipalities of 40,000 or less), volunteer workers, members of the clergy, persons engaged in teaching or nonmanual capacities in religious or educational institutions
North Carolina	Farm labor, domestic servants, sawmill and logging operators having less than 10 employees
North Dakota	Farm labor, domestic servants, casual workers, illegal enterprises, executive officers receiving more than $2400 a year, members of the clergy, charitable workers
Ohio	Casual employees
Oregon	Farm labor
Pennsylvania	Domestic servants, casual employees, out workers
Puerto Rico	Domestic service, home workers, casual workers
Rhode Island	Farm labor, domestic servants, casual employees, employees receiving more than $3,000 a year

Table 6 — Continued

States[1]	Employment Exemptions[2]
South Carolina	Casual employees, persons selling agricultural products, farm labor, sawmills, manufacturers of shipping containers, logging operators, production of turpentine, steam laundries, rock quarries, sand mines, oil mills, domestic servants, railroad express companies, state and county fair associations
South Dakota	Farm labor, domestic servants, casual workers
Tennessee	Farm labor, domestic servants, casual employees
Texas	Farm and ranch labor, domestic servants, employees not in the usual course of the employer's business, employees of state universities paid on a piece work basis
Utah	Farm labor, domestic servants, and casual employees
Virginia	Casual employees, horticultural and farm laborers, domestic servants, elective employees, executives of firms
Washington	Employments not extra hazardous
West Virginia	Farm labor, domestic servants
Wisconsin	Farm labor, domestic servants, employees not in the usual course of the employer's business

in periods of inflation when compensation payments lag behind soaring prices.

National conferences on labor legislation sponsored by the Bureau of Labor Standards have recommended that at least two-thirds of the employee's wage be paid in compensation and that this percentage should be computed upon full-time wages. When an average based upon the time worked is taken, particularly in depressed years, the employee frequently receives a payment below subsistence level. It is necessary to set a minimum payment that will equal at least this level. It is important, too, for a maximum payment to be high enough to maintain the living standard of a well-paid worker.

The question of the length of time payments should continue is equally fundamental. The Bureau of Labor Standards has recommended that the following provisions be made:

a) Fatal cases: to the widow — benefits until death or remarriage with not less than two years compensation to be paid in a lump sum upon remarriage; to the children — benefits until 18 years of age and thereafter if physically incapacitated or mentally retarded.
b) Permanent total disability: during life.

c) Temporary total disability: during disability.
d) Permanent partial disability: compensation should be calculated on the basis of a percentage of the permanent total disability and should be payable in addition to compensation for the healing period.

Liberal trends in compensation laws are best shown by the fact that 37 of the 44 state legislatures that convened in 1949 increased their benefits for death or disability. During 1950, Massachusetts again increased its benefits. New Jersey, among the seven state legislators holding sessions that did not change benefit provisions in 1949, increased its maximum temporary disability benefits in 1950. Kentucky, whose legislature did not convene in 1949, raised its compensation payments during 1950. This was done by increasing maximum payments, extending the number of weeks of payment, increasing the maximum percentage of wages for computing benefits and increasing the total amount of benefits allowed. Benefits for death were increased in 25 states, including Illinois and Hawaii.

These increases in workmen's compensation benefits included changes in occupational disease compensation in 30 states and Hawaii. Michigan, Rhode Island, West Virginia, and Hawaii raised their maximum weekly benefits for temporary total disability cases about 40%. The Illinois legislature increased benefit payments across the board 15.4%. At present, maximum weekly benefits of $25 or more are provided for temporary total disability for occupational disease in 32 states. The maximum is $30 or more in 18 laws: $35 in six laws; and over $40 in three laws. Table 7 summarizes the changes made in 1949 in weekly maximum payments for temporary total disability. Table 8 shows the maximum payments for the states and districts not making changes in 1949. Temporary total disability was selected as the illustration of the general trend because the great majority of cases of occupational disease fall in that group.[14]

Medical Care

Prompt medical aid is advisable to speed recovery and to prevent the necessity of permanent disability. Benefits paid in this way are in addition to any compensation to which the worker may be entitled. Some states provide unlimited funds for medical benefits and others place a maximum on the care to be given. A number of states with maxima allow the administrative agency to exceed the set limit at its discretion.

Medical aid benefits were liberalized in 19 states[15] and Hawaii in 1949. Maryland and Wyoming changed their laws to provide for benefits sufficient to cover all expenses, bringing the number of states with un-

Table 7. Increases in Maximum and Minimum Weekly Benefits for Temporary Total Disability under 1949-50 Amendments to Workmen's Compensation Laws that also apply to Occupational Disease*

State	Weekly Minimum Increase		Weekly Maximum Increase	
	from	to	from	to
Arkansas	$ 7.00	$ 7.00	$20.00	$25.00
Colorado	7.00	10.00	17.50	22.75
Delaware	8.00	8.00	21.00	25.00
Georgia	4.00	7.00	20.00	24.00
Idaho	8.00	10.00	14.00-20.00	17.00-28.00[1]
Illinois	9.75	11.25	19.50-26.00	22.50-30.00[2]
Indiana	11.00	12.10	20.08	23.10
Iowa	8.00	12.00	20.00	24.00
Kentucky	7.00	7.00	21.00	24.00
Maine	7.00	12.00	21.00	24.00
Maryland	10.00	12.00	25.00	28.00
Massachusetts	18.00	18.00	25.00	30.00[3]
Michigan	10.00	11.00	21.00	24.00-34.00[4]
Minnesota	13.50	15.00	27.00	30.00
Nebraska	6.00	11.00	18.00	22.00
Nevada	10.38	.....	20.77-31.15	24.23-34.62[5]
New Hampshire	10.00	10.00	25.00	30.00
New Jersey	10.00	10.00	25.00	30.00
New Mexico	12.00	12.00	22.00	25.00
North Dakota	9.00	9.00	20.00-32.00	20.00-37.00[6]
Ohio	10.00	10.00	25.00	30.00
Oregon	11.54	17.31	18.46-34.38	21.92-40.38[7]
Pennsylvania	10.00	12.50	20.00	25.00
Rhode Island	12.00	15.00	20.00	28.00
South Dakota	7.50	10.00	20.00	25.00
Tennessee	8.00	10.00	20.00	25.00
Utah	10.00	15.00	22.50-28.15	25.00-31.25[8]
Washington	.....	.....	17.21-32.31	20.77-35.77[9]
West Virginia	10.00	15.00	18.00	25.00
Wisconsin	8.75	8.75	28.00	32.55
Hawaii	8.00	8.00	25.00	35.00

[1] $20 for married employee, plus $2 per week for each dependent child under 18, maximum $28, minimum $10.

[2] $24 if employee has 2 children under 18; $27 if 3 children; and $30 if 4 or more children.

[3] $2.50 added to this total for each total dependent, but aggregate of such amounts limited to weekly wage.

[4] For workers without dependents; with 1 dependent, $26; with 2 dependents, $28; with 3 dependents, $30; with 4 dependents, $32; with 5 or more dependents, $34.

[5] For worker without dependents; with 1 dependent, $27.69; with 2 dependents, $32.31; with 3 or more dependents, $34.62.

[6] Plus $2 per week for each dependent child under 18, and $5 for dependent spouse, maximum $37.

Table 8. Maximum and Minimum Weekly Benefits for Temporary Total Disability for States and Districts having Occupational Disease Provisions Not Changed by 1949-50 Amendments*

State	Minimum	Maximum
Arizona	$.....	$150.00
California	9.75	30.00
Connecticut	9.00	32.00
Florida	8.00	22.00
Missouri	8.00	25.00
Montana	13.00	20.00[1]
North Carolina	8.00	24.00
New York	12.00	32.00
South Carolina	5.00	25.00
Texas	9.00	25.00
Virginia	6.00	20.00
Alaska	.....	.....
District of Columbia	12.00	35.00
Puerto Rico	3.00	15.00

[1] $22 if employee has 1 dependent; $23 if 2 dependents; $24 if 3 dependents; $25 if 4 dependents; $26 if 5 or more dependents.

* Source: Bureau of Labor Standards, *Bulletin No. 125*, pp. 26-28.

limited benefits to 31. However, seven states still have no provisions in their workmen's compensation laws to provide for occupational diseases, and nine others that do have some provision for occupational disease in their laws do not provide medical benefits.

In Arizona and Utah, medical benefits are payable for occupational disease only in case of total disability and are further limited to a maximum of $500. Full benefits are paid in the case of accidents in these states, however. Arkansas, Illinois, and Rhode Island place a six-month maximum limit on extensions granted for medical payments in the case of silicosis or asbestosis although this limitation does not apply to other diseases or injuries. Nevada, also, sets a maximum only for silicosis. North Carolina limits treatment of silicosis and asbestosis to three years with a

[7] For unmarried workman. For married workman without children $25.38; if he has 1 child under 17, $28.08; if 2 children, $33.46; if 3 children, $36.92, if 4 or more children, $40.38.

[8] Plus 5% for each dependent child (not to exceed 5) under 18 years.

[9] For unmarried workman. Same amount for married workman with wife and no children; with wife and 1 child, $25.38 a week; with wife and 2 children, $28.85 a week; and $2.31 for each additional child, but total payments shall not exceed $35.77 a week.

* Source: Bureau of Labor Standards, *Bulletin No. 99*, p. 19; *Bulletin No. 125*, pp. 26-28.

Table 9. Statutory Provisions Relating to Limited Medical Benefits for States that have Occupational Disease Provisions*

States	Period	Amount
Alaska	1 year	....
Arizona	.....	$500 for total disability $250 for partial disability
Arkansas[1]	.....	....
Colorado	6 months	$500
Georgia	10 weeks[2]	$500[3]
Idaho	90 days[4]	....
Illinois[5]	.....	....
Iowa	.....	$1500
Kentucky	.....	$2500
Michigan	6 months[6]	....
Montana	9 months	$1000
Nevada	6 months[7]	([8])
North Carolina[9]	.....	....
Pennsylvania	90 days	$225[10]
South Dakota	20 weeks	$200[11]
Tennessee	6 months	$800
Texas	4 weeks	....
Virginia	60 days[12]	....
West Virginia	.....	$1600[13]

[1] In case of silicosis or asbestosis, 90 day limit; may be extended 90 days.
[2] Period may be extended.
[3] Board may permit additional $250.
[4] May be extended 90 days.
[5] Limited to 6 months in cases of silicosis or asbestosis.
[6] Commission may extend 3 additional 6 month periods.
[7] May be extended 1 year.
[8] Limits hospital and medical expenses in the case of silicosis to $750.
[9] Treatment for silicosis or asbestosis is limited to 3 years and to $1,000 a year.
[10] Hospital services also allowed for 90 days with a maximum of $225.
[11] Also hospital benefits not to exceed $500.
[12] Additional services not to exceed 180 days.
[13] Additional $800 may be authorized. $800 may be paid for vocational rehabilitation. No allowance for medical treatment of silicosis.

* Source: Bureau of Labor Standards, *Bulletin No. 125*, p. 37.

maximum expenditure for medical treatment set at $1,000 a year. West Virginia makes no provisions at all for the medical treatment of silicosis although it does allow a limited benefit of $800 to be paid for other diseases or injuries. Thirteen jurisdictions having occupational disease coverage besides those mentioned above have limited medical benefits for all diseases and injuries. (See Table 9.)

Adequacy of Administration

Workmen's compensation laws allow for either of two types of administration: by special administrative agencies, or by the courts. The

objective is to furnish a convenient inexpensive method of settling the claims of workers. The inadequacies of court administration have long been recognized by almost all states. Workmen's compensation boards or commissions are believed by authorities to be able to administer laws better than the courts, particularly if they include or are provided with experts who can handle the many technicalities involved in workmen's compensation promptly and efficiently.

In those states in which compensation is administered by boards or commissions, appeal to the courts is allowed. Appeal procedure varies from state to state. The commission is usually given the exclusive right to determine the facts of the case and the courts can consider only points of law. In some states, however, the courts are allowed to consider the whole case and to examine the facts involved. Administrative remedies must be exhausted before court appeals are made.

In five states court procedure remains in the administration of workmen's compensation laws, and two of these states — New Mexico and Tennessee — also have occupational disease provisions. New Hampshire has joint administration by an agency and the courts. In 1949, the Commissioner of Labor was given an equal right with the Superior Court to receive petitions for hearings and awards.

Security for Payment

Most state laws provide for some type of insurance plan to give the incapacitated worker or beneficiary maximum security and the certainty of securing his claim. Three types of insurance are allowed: self insurance, private insurance, and state insurance. Most acts permit the employer to insure with private companies approved by the board. In some states competing state insurance plans exist and the employer is allowed his choice of the two. When no other type of insurance is allowed but that of the state, the system is called "exclusive." Some statutes allow the employer the option of self insurance. This means that an employer who meets certain qualifications is allowed to carry his own risk. Several states were prompted by the last depression to set up special guaranty funds to prevent loss to workers through the insolvency of insurance companies.

There have been no special trends during the forties in the insurance provisions of state laws. All states have some designated method of financing the payment of benefits to injured employees: all require an employer either to obtain insurance or to give proof of his ability to pay compensation in case of liability. Eighteen states[16] and Puerto Rico have state insurance systems. Of these, seven states[17] and Puerto Rico have so called "exclusive" systems.

Two states amended their requirements in 1949. Massachusetts

changed its policy regarding self-insurers and now requires them to submit a sworn statement of assets and liabilities, a pay-roll report for the preceding year, and a detailed description of the nature of the business. Utah's law was changed to require every insurance company and the state fund to carry all risks for which application is made. No policy once issued can be cancelled except by agreement between the Industrial Commission and the employer or, in the case of non-payment of premium, by 30 days notice to the commission and the employer.

LEGISLATION IN ILLINOIS

Although the history of occupational disease legislation in Illinois dates back to 1911, the present Workmen's Occupational Disease Act was enacted in 1936 and last amended in 1949. If we look in the Illinois law for the six areas mentioned previously in this bulletin, we find that it compares favorably with other states in some sections and unfavorably in others.

Illinois provides full coverage for occupational diseases. Although the occupational disease law is elective for employers and employees, it does not make numerical exemptions. The law does, however, exclude farm labor, totally blind persons, persons "not engaged in the usual course of the trade, business, profession or occupation of the employer," members of fire departments in cities over 500,000, and officials of city, county, town, or state.

Compensation payments do not begin in the case of temporary disability until the eighth day after the disability occurs. If the disease extends beyond 28 days, however, compensation payments are given for the first seven days. Although Illinois increased all compensation benefits 15.4% in 1949, it is still lower in the area of weekly benefit rate payments than many other states.

Additional allowances are provided in Illinois, however, for the second, third, and fourth child of an injured or sick person. (See Tables 7 and 8.) In the area of medical benefits, the employer is liable to pay what is "reasonably required to effect a cure" for all occupational diseases with the exception of silicosis. The employer is not expected to provide treatment for silicosis beyond six months.

The Industrial Commission in Illinois administers the Workmen's Occupational Disease Act. No provisions of the act in regard to the amount of compensation may be waived except with the approval of the commission. Illinois has a second-injury fund supported by a levy on the insurance companies and the self-insurers by a payment of $400 in no dependency death cases. When the fund falls below a specified minimum, payments are made on permanent partial disabilities.

CONCLUSIONS

Legislation for the compensation of occupational disease has been in a transitional period in most states and territories during the past decade. Once it was decided that a worker should not be made to bear that part of the cost of production attributable to loss of labor time and medical expenses arising from industrial health hazards, it was a short step to the realization that distinctions between injury and disease are arbitrary in nature. This idea is now widespread and more and more differences in legal provisions for injuries and diseases have been swept away by our legislatures.

Recent amendments to laws in this area show the growth of this philosophy. More and more states have shifted to full coverage of occupational diseases. Law makers have been reaching out gradually to bring more persons and employments within the scope of existing statutes. They have reduced numerical and employment exemptions and have sought to protect the handicapped through the establishment of second-injury funds. Monetary payments to the sick, both for compensation and for medical treatment, have been increased.

More than remnants of old policies remain, however, and serious coverage limitations exist. Seven states have no provision for occupational disease and at least that number have inadequate coverage under the schedule system. Although the requirements of no two states are identical, it is essential that an existing law meets the requirements of the population within its jurisdiction. For a mining state to be without provision for silicosis is more serious than for a predominantly agricultural state to lack such benefits. West Virginia, an important mining state, for example, now makes no medical allowance for the treatment of silicosis although it does pay compensation for that disease. Specific exclusion of farm labor in most states deprives a large group of workers from the protection of workmen's compensation.

Although it must be fully recognized that prevention of disease is the ultimate answer to the occupational disease problem, distinctions between diseases and injuries should not be allowed to prevent compensation protection against many serious hazards. Many workers receive none of the benefits of workmen's compensation and some of those who are eligible receive inadequate compensation if they contract an occupational disease.

NOTES

1. The *Annual Report of Industrial Accidents in Illinois in 1949*, Part I, p. 22.
2. U. S. Department of Labor, Bureau of Labor Standards, *Bulletin No. 83.*
3. Re Hurle, 217 Mass 223.
4. John A. McClure, "Occupational Disease Legislation" (Master's Essay, University of Illinois, 1937), p. 14.
5. Bureau of Labor Standards, *Bulletin No. 70.*
6. Bureau of Labor Standards, *Bulletin No. 13*, p. 47.
7. Bureau of Labor Standards, *Bulletin No. 99*, p. 25.
8. Bureau of Labor Standards, *Bulletin No. 70*, p. 5.
9. Bureau of Labor Standards, *Bulletin No. 99*, p. 4.
10. *Social Security Bulletin*, Vol. 13, No. 7.
11. Commons and Andrews, *Principles of Labor Legislation*, p. 242.
12. Bureau of Labor Standards, *Bulletin No. 125*, p. 5.
13. Bureau of Labor Standards, *Bulletin No. 99*, p. 25.
14. The Bureau of Labor Standards has published full benefit tables in *Bulletin No. 125.* These new statistics bring compensation data through the year 1950.
15. Alabama, Arkansas, Colorado, Georgia, Iowa, Maryland, Michigan, Montana, Nevada, New Mexico, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming.
16. Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Washington, West Virginia, and Wyoming.
17. Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, and Wyoming.

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